

## **Part 4**

### **Improvement District Act**

#### **17B-2a-401 Title.**

This part is known as the "Improvement District Act."

Enacted by Chapter 329, 2007 General Session

#### **17B-2a-402 Provisions applicable to improvement districts.**

- (1) Each improvement district is governed by and has the powers stated in:
  - (a) this part; and
  - (b) Chapter 1, Provisions Applicable to All Local Districts.
- (2) This part applies only to improvement districts.
- (3) An improvement district is not subject to the provisions of any other part of this chapter.
- (4) If there is a conflict between a provision in Chapter 1, Provisions Applicable to All Local Districts, and a provision in this part, the provision in this part governs.

Enacted by Chapter 329, 2007 General Session

#### **17B-2a-403 Additional improvement district powers.**

- (1) In addition to the powers conferred on an improvement district under Section 17B-1-103, an improvement district may:
  - (a) acquire through construction, purchase, gift, or condemnation, or any combination of these methods, and operate all or any part of a system for:
    - (i) the supply, treatment, and distribution of water;
    - (ii) the collection, treatment, and disposition of sewage;
    - (iii) the collection, retention, and disposition of storm and flood waters;
    - (iv) the generation, distribution, and sale of electricity, subject to Section 17B-2a-406; and
    - (v) the transmission of natural or manufactured gas if:
      - (A) the system is connected to a gas plant, as defined in Section 54-2-1, of a gas corporation, as defined in Section 54-2-1, that is regulated under Section 54-4-1;
      - (B) the system is to be used to facilitate gas utility service within the district; and
      - (C) the gas utility service was not available within the district before the acquisition of the system;
  - (b) issue bonds in accordance with Chapter 1, Part 11, Local District Bonds, to carry out the purposes of the improvement district;
  - (c) appropriate or acquire water or water rights inside or outside the improvement district's boundaries;
  - (d) sell water or other services to consumers residing outside the improvement district's boundaries;
  - (e) enter into a contract with a gas corporation that is regulated under Section 54-4-1 to:
    - (i) provide for the operation or maintenance of all or part of a system for the transmission of natural or manufactured gas; or
    - (ii) lease or sell all or a portion of a system described in Subsection (1)(e)(i) to a gas corporation;
  - (f) enter into a contract with a person for:
    - (i) the purchase or sale of water or electricity;

- (ii) the use of any facility owned by the person; or
  - (iii) the purpose of handling the person's industrial and commercial waste and sewage;
  - (g) require pretreatment of industrial and commercial waste and sewage; and
  - (h) impose a penalty or surcharge against a public entity or other person with which the improvement district has entered into a contract for the construction, acquisition, or operation of all or a part of a system for the collection, treatment, and disposal of sewage, if the public entity or other person fails to comply with the provisions of the contract.
- (2) The new gas utility service under Subsection (1)(a)(v)(B) shall be provided by a gas corporation regulated under Section 54-4-1 and not by the district.
- (3) An improvement district may not begin to provide sewer service to an area where sewer service is already provided by an existing sewage collection system operated by a municipality or other political subdivision unless the municipality or other political subdivision gives its written consent.
- (4) An improvement district authorized to operate all or any part of a system for the collection, treatment, or disposition of sewage may acquire, construct, or operate a resource recovery project in accordance with Section 19-6-508.

Amended by Chapter 273, 2016 General Session

Amended by Chapter 346, 2016 General Session

**17B-2a-404 Improvement district board of trustees.**

- (1) As used in this section:
- (a) "County district" means an improvement district that does not include within its boundaries any territory of a municipality.
  - (b) "County member" means a member of a board of trustees of a county district.
  - (c) "Electric district" means an improvement district that was created for the purpose of providing electric service.
  - (d) "Included municipality" means a municipality whose boundaries are entirely contained within but do not coincide with the boundaries of an improvement district.
  - (e) "Municipal district" means an improvement district whose boundaries coincide with the boundaries of a single municipality.
  - (f) "Regular district" means an improvement district that is not a county district, electric district, or municipal district.
  - (g) "Remaining area" means the area of a regular district that:
    - (i) is outside the boundaries of an included municipality; and
    - (ii) includes the area of an included municipality whose legislative body elects, under Subsection (5)(a)(ii), not to appoint a member to the board of trustees of the regular district.
  - (h) "Remaining area member" means a member of a board of trustees of a regular district who is appointed, or, if applicable, elected to represent the remaining area of the district.
- (2) The legislative body of the municipality included within a municipal district may:
- (a) elect, at the time of the creation of the district, to be the board of trustees of the district; and
  - (b) adopt at any time a resolution providing for:
    - (i) the election of board of trustees members, as provided in Section 17B-1-306; or
    - (ii) the appointment of board of trustees members, as provided in Section 17B-1-304.
- (3)
- (a) The legislative body of a county whose unincorporated area is partly or completely within a county district may:

- (i) elect, at the time of the creation of the district, to be the board of trustees of the district, even though a member of the legislative body of the county may not meet the requirements of Subsection 17B-1-302(1)(a);
  - (ii) adopt at any time a resolution providing for:
    - (A) the election of board of trustees members, as provided in Section 17B-1-306; or
    - (B) except as provided in Subsection (4), the appointment of board of trustees members, as provided in Section 17B-1-304; and
  - (iii) if the conditions of Subsection (3)(b) are met, appoint a member of the legislative body of the county to the board of trustees, except that the legislative body of the county may not appoint more than three members of the legislative body of the county to the board of trustees.
- (b) A legislative body of a county whose unincorporated area is partly or completely within a county district may take an action under Subsection (3)(a)(iii) if:
  - (i) more than 35% of the residences within a county district that receive service from the district are seasonally occupied homes, as defined in Subsection 17B-1-302(1)(b)(i)(B);
  - (ii) the board of trustees are appointed by the legislative body of the county; and
  - (iii) there are at least two appointed board members who meet the requirements of Subsection 17B-1-302(1), except that a member of the legislative body of the county need not satisfy the requirements of Subsection 17B-1-302(1).
- (4) Subject to Subsection (6)(d), the legislative body of a county may not adopt a resolution providing for the appointment of board of trustees members as provided in Subsection (3)(a)(ii) (B) at any time after the county district is governed by an elected board of trustees unless:
  - (a) the elected board has ceased to function;
  - (b) the terms of all of the elected board members have expired without the board having called an election; or
  - (c) the elected board of trustees unanimously adopts a resolution approving the change from an elected to an appointed board.
- (5)
  - (a)
    - (i) Except as provided in Subsection (5)(a)(ii), the legislative body of each included municipality shall each appoint one member to the board of trustees of a regular district.
    - (ii) The legislative body of an included municipality may elect not to appoint a member to the board under Subsection (5)(a)(i).
  - (b) Except as provided in Subsection (6), the legislative body of each county whose boundaries include a remaining area shall appoint all other members to the board of trustees of a regular district.
- (6) Notwithstanding Subsection (3), each remaining area member of a regular district and each county member of a county district shall be elected, as provided in Section 17B-1-306, if:
  - (a) the petition or resolution initiating the creation of the district provides for remaining area or county members to be elected;
  - (b) the district holds an election to approve the district's issuance of bonds;
  - (c) for a regular district, an included municipality elects, under Subsection (5)(a)(ii), not to appoint a member to the board of trustees; or
  - (d)
    - (i) at least 90 days before the municipal general election or regular general election, as applicable, a petition is filed with the district's board of trustees requesting remaining area members or county members, as the case may be, to be elected; and

- (ii) the petition is signed by registered voters within the remaining area or county district, as the case may be, equal in number to at least 10% of the number of registered voters within the remaining area or county district, respectively, who voted in the last gubernatorial election.
- (7) Subject to Section 17B-1-302, the number of members of a board of trustees of a regular district shall be:
  - (a) the number of included municipalities within the district, if:
    - (i) the number is an odd number; and
    - (ii) the district does not include a remaining area;
  - (b) the number of included municipalities plus one, if the number of included municipalities within the district is even; and
  - (c) the number of included municipalities plus two, if:
    - (i) the number of included municipalities is odd; and
    - (ii) the district includes a remaining area.
- (8)
  - (a) Except as provided in Subsection (8)(b), each remaining area member of the board of trustees of a regular district shall reside within the remaining area.
  - (b) Notwithstanding Subsection (8)(a) and subject to Subsection (8)(c), each remaining area member shall be chosen from the district at large if:
    - (i) the population of the remaining area is less than 5% of the total district population; or
    - (ii)
      - (A) the population of the remaining area is less than 50% of the total district population; and
      - (B) the majority of the members of the board of trustees are remaining area members.
  - (c) Application of Subsection (8)(b) may not prematurely shorten the term of any remaining area member serving the remaining area member's elected or appointed term on May 11, 2010.
- (9) If the election of remaining area or county members of the board of trustees is required because of a bond election, as provided in Subsection (6)(b):
  - (a) a person may file a declaration of candidacy if:
    - (i) the person resides within:
      - (A) the remaining area, for a regular district; or
      - (B) the county district, for a county district; and
    - (ii) otherwise qualifies as a candidate;
  - (b) the board of trustees shall, if required, provide a ballot separate from the bond election ballot, containing the names of candidates and blanks in which a voter may write additional names; and
  - (c) the election shall otherwise be governed by Title 20A, Election Code.
- (10)
  - (a)
    - (i) This Subsection (10) applies to the board of trustees members of an electric district.
    - (ii) Subsections (2) through (9) do not apply to an electric district.
  - (b) The legislative body of the county in which an electric district is located may appoint the initial board of trustees of the electric district as provided in Section 17B-1-304.
  - (c) After the initial board of trustees is appointed as provided in Subsection (10)(b), each member of the board of trustees of an electric district shall be elected by persons using electricity from and within the district.
  - (d) Each member of the board of trustees of an electric district shall be a user of electricity from the district and, if applicable, the division of the district from which elected.
  - (e) The board of trustees of an electric district may be elected from geographic divisions within the district.

- (f) A municipality within an electric district is not entitled to automatic representation on the board of trustees.

Amended by Chapter 258, 2015 General Session

**17B-2a-405 Board of trustees of certain sewer improvement districts.**

(1) As used in this section:

- (a) "Jurisdictional boundaries" means:
  - (i) for a qualified county, the boundaries that include:
    - (A) the area of the unincorporated part of the county that is included within a sewer improvement district; and
    - (B) the area of each nonappointing municipality that is included within the sewer improvement district; and
  - (ii) for a qualified municipality, the boundaries that include the area of the municipality that is included within a sewer improvement district.
- (b) "Nonappointing municipality" means a municipality that:
  - (i) is partly included within a sewer improvement district; and
  - (ii) is not a qualified municipality.
- (c) "Qualified county" means a county:
  - (i) some or all of whose unincorporated area is included within a sewer improvement district; or
  - (ii) which includes within its boundaries a nonappointing municipality.
- (d) "Qualified county member" means a member of a board of trustees of a sewer improvement district appointed under Subsection (3)(a)(ii).
- (e) "Qualified municipality" means a municipality that is partly or entirely included within a sewer improvement district that includes:
  - (i) all of the municipality that is capable of receiving sewage treatment service from the sewer improvement district; and
  - (ii) more than half of:
    - (A) the municipality's land area; or
    - (B) the assessed value of all private real property within the municipality.
- (f) "Qualified municipality member" means a member of a board of trustees of a sewer improvement district appointed under Subsection (3)(a)(i).
- (g) "Sewer improvement district" means an improvement district that:
  - (i) provides sewage collection, treatment, and disposal service; and
  - (ii) made an election before 1954 under Laws of Utah 1953, Chapter 29, to enable it to continue to appoint its board of trustees members as provided in this section.

(2)

- (a) Notwithstanding Section 17B-2a-404, the board of trustees members of a sewer improvement district shall be appointed as provided in this section.
- (b) The board of trustees of a sewer improvement district may revoke the election under Subsection (1)(d) and become subject to the provisions of Section 17B-2a-404 only by the unanimous vote of all members of the sewer improvement district's board of trustees at a time when there is no vacancy on the board.

(3)

- (a) The board of trustees of each sewer improvement district shall consist of:
  - (i) at least one person but not more than three persons appointed by the mayor of each qualified municipality, with the consent of the legislative body of that municipality; and
  - (ii) at least one person but not more than three persons appointed by:

- (A) the county executive, with the consent of the county legislative body, for a qualified county operating under a county executive-council form of county government; or
- (B) the county legislative body, for each other qualified county.
- (b) Each qualified county member appointed under Subsection (3)(a)(ii) shall represent the area within the jurisdictional boundaries of the qualified county.
- (4) Notwithstanding Subsection 17B-1-302(2), the number of board of trustees members of a sewer improvement district shall be the number that results from application of Subsection (3)(a).
- (5) Except as provided in this section, an appointment to the board of trustees of a sewer improvement district is governed by Section 17B-1-304.
- (6) A quorum of a board of trustees of a sewer improvement district consists of members representing more than 50% of the total number of qualified county and qualified municipality votes under Subsection (7).
- (7)
  - (a) Subject to Subsection (7)(b), each qualified county and each qualified municipality is entitled to one vote on the board of trustees of a sewer improvement district for each \$10,000,000, or fractional part larger than 1/2 of that amount, of assessed valuation of private real property taxable for district purposes within the respective jurisdictional boundaries, as shown by the assessment records of the county and evidenced by a certificate of the county auditor.
  - (b) Notwithstanding Subsection (7)(a), each qualified county and each qualified municipality shall have at least one vote.
- (8) If a qualified county or qualified municipality appoints more than one board member, all the votes to which the qualified county or qualified municipality is entitled under Subsection (7) for an item of board business shall collectively be cast by a majority of the qualified county members or qualified municipal members, respectively, present at a meeting of the board of trustees.

Amended by Chapter 258, 2015 General Session

**17B-2a-406 Improvement districts providing electric service -- Public Service Commission jurisdiction -- Exceptions.**

- (1) As used in this section:
  - (a) "Commission" means the Public Service Commission of Utah established in Section 54-1-1.
  - (b) "Electric corporation" has the same meaning as "electrical corporation" defined in Section 54-2-1.
  - (c) "Electric improvement district" means an improvement district that provides electric service as authorized under Subsection 17B-2a-403(1)(a)(iv).
  - (d) "Stranded asset" means an asset that:
    - (i) an electric corporation owns and operates;
    - (ii) is designed to serve an area that is:
      - (A) within the electric corporation's certificated service area before the area is removed from the certificated service area by commission order as provided in Subsection (3)(b)(i)(B)(II); and
      - (B) within the boundary of an electric improvement district; and
    - (iii) will not be useful to or used by the electric corporation after removal of the area from the electric corporation's certificated service area.
- (2) An electric improvement district is a public utility and subject to the jurisdiction of the commission.

- (3)
  - (a) Except as provided in Subsection (3)(b), an electric improvement district:
    - (i) may include only an area where:
      - (A) no retail electricity has been provided to commercial, industrial, residential, and other users of electricity from an investor-owned utility within any part of an area certificated by the commission or an area adjacent to that area, municipal agency, or electric cooperative within the five years immediately preceding September 1, 1985; and
      - (B) electric service is provided to at least one user of electricity within the electric service district as of September 1, 1985; and
    - (ii) shall have filed an application for certification and received approval by the commission by September 1, 1986.
  - (b)
    - (i) An electric improvement district created after May 11, 2009 may provide electric service within the boundary of the improvement district if:
      - (A) no part of the boundary of the electric improvement district is closer than 40 miles to an existing service line of an electric corporation;
      - (B)
        - (I) no part of the area within the boundary of the electric improvement district is within the certificated service area of an electric corporation; or
        - (II) the area within the boundary of the electric improvement district that is also within the certificated service area of an electric corporation is removed from the electric corporation's certificated service area by commission order in a proceeding initiated by a petition filed by and at the discretion of the electric corporation; and
      - (C) before January 1, 2010, the electric improvement district receives a certificate of public convenience and necessity from the commission authorizing the electric improvement district to provide electric service to the area within the boundary of the electric improvement district.
    - (ii) An electric improvement district that provides electric service as provided in Subsection (3)(b)(i) shall pay an electric corporation an amount equal to the fair market value of each stranded asset of the electric corporation.
- (4) Nothing in this part may be construed to give the commission jurisdiction over:
  - (a) an improvement district, other than an electric improvement district;
  - (b) a municipality; or
  - (c) an association of municipalities organized under Title 11, Chapter 13, Interlocal Cooperation Act.
- (5) Before an electric improvement district serves any customer, the electric improvement district shall obtain a certificate of public convenience and necessity from the commission.
- (6)
  - (a) Section 54-7-12 does not apply to rate changes of an electric improvement district if:
    - (i) the district is organized for the purpose of distributing electricity to customers within the boundary of the district on a not-for-profit basis;
    - (ii) the schedule of new rates or other change that results in new rates has been approved by the board of trustees of the district;
    - (iii) prior to the implementation of any rate increases, the district first holds a public meeting for all its customers to whom mailed notice of the meeting is sent at least 10 days prior to the meeting; and
    - (iv) the district has filed the schedule of new rates or other change with the commission.

- (b) The commission shall make the district's schedule of new rates or other change available for public inspection.

Amended by Chapter 381, 2014 General Session